

**BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
OFFICE OF THE ADMINISTRATOR**

In the Matter of:

Logis, Inc.,

Respondent.

**PHMSA Case No. 05-0040-FF-SW
DMS Docket No. PHMSA-2005-21222-5**

DECISION ON APPEAL

I. Procedural History

On May 2, 2005, the Chief Counsel of the Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Department of Transportation (DOT), issued a Default Order¹ to Logis, Inc., (Respondent) finding the company had knowingly committed one violation of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180. The Default Order, which is incorporated by reference, assessed the \$6,190 civil penalty proposed in the Notice of Probable Violation (Notice), dated February 28, 2005. U.S. Postal Service records show Respondent received the Default Order on May 9, 2005. In a letter received May 26, 2005, Respondent timely filed an appeal of the Default Order.

Due to an administrative error, a delinquency notice dated September 23, 2005, was sent to Respondent, seeking to collect payment on the Order despite the pending appeal. Although Respondent was not obligated to pay the civil penalty while an appeal was pending, Respondent submitted check number 22987, dated September 26, 2005, in the amount of \$6,327.10.

¹ DMS Docket Number PHMSA-2005-21222-1 at <http://dms.dot.gov>.

Through a telephone conversation with the Office of Chief Counsel on November 18, 2005, Respondent indicated it wished to pursue its appeal.

II. Summary

In this appeal, Respondent seeks withdrawal of the Default Order. Respondent states it submitted a timely response to the Notice; however, the "response" is dated prior to the receipt of the Notice. Although Respondent contends the pre-dating of the response is a typographical error, Respondent has been unable to produce any other evidence to support its contention it responded to the Notice. Because Respondent failed to file a response to the Notice, the Chief Counsel appropriately issued a Default Order after determining Respondent knowingly committed one violation of the Hazardous Materials Regulations. Respondent's appeal is denied.

III. Background

This case arises from a November 3, 2004 compliance inspection performed at Respondent's facilities in Laredo, Texas. The inspector reviewed shipping papers from recent shipments of hazardous materials offered for transportation into Mexico. One shipping paper stated the radioactive materials packaging was empty when the packaging actually contained a quantity of radioactive material regulated by the HMR. Another shipping paper did not have a proper shipping description. At the conclusion of the inspection, the inspector provided Respondent with an exit briefing outlining the probable violations.

On February 28, 2005, the Office of Chief Counsel issued a Notice of Probable Violation (Notice) to Respondent, proposing a civil penalty in the amount of \$6,190 for one violation of the HMR. The proposed penalty reflected a \$565 increase for a prior violation. The return receipt and U.S. Postal Service records show Respondent received the Notice on March 8, 2005.

Respondent did not reply to the Notice. Accordingly, the Chief Counsel issued a Default Order on May 3, 2005, finding Respondent had committed one violation of the HMR and assessing a \$6,190 civil penalty.

IV. Discussion

Respondent appealed the Default Order, claiming it had responded to the Notice. Respondent bears the burden of proof when challenging a Default Order. Respondent must demonstrate it was not in default when it failed to respond to the Notice.

As evidence of its filing of a response, Respondent submitted a copy of a letter dated March 6, 2005 – two days prior to its receipt of the Notice. The Office of Chief Counsel requested an explanation of the discrepancy. On July 21, 2005, Respondent submitted a response stating the date was “a technical mistake on the use of the numbers”² – presumably meaning the date was a typographical error. Respondent did not submit any other evidence of having filed a timely response to the Notice.

In this case, Respondent’s only evidence of having filed a response is a misdated letter. Although PHMSA does not require a return receipt or other certificate of mailing in order to prove a timely response, more than a photocopy of a misdated letter is necessary. Respondent did not meet its burden of proof in this case.

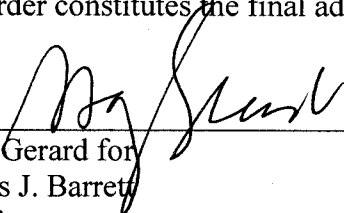
I find Respondent waived its opportunity to contest the allegations in the Notice when it failed to respond. There is no justification to grant Respondent’s appeal and withdraw the civil penalties previously assessed.³ Respondent’s appeal is denied.

² Letter from Logis, Inc. to the Office of Chief Counsel of 7/21/05, DMS Docket No. PHMSA-2005-21222-4 at <http://dms.dot.gov/>.

³ Respondent did not submit any new information with its appeal. Although Respondent has made claims of addressing the violations, Respondent has not provided any evidence to support its claims.

PHMSA accepts Respondent's September 26, 2005 payment in full satisfaction of the civil penalty assessed in the Default Order. PHMSA shall close this case with prejudice.

This Order constitutes the final administrative action in this proceeding.



Stacey Gerard for
Thomas J. Barrett
Administrator

Date Issued:

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

CERTIFICATE OF SERVICE

This is to certify that on the ____ day of _____, 2006, the Undersigned served in the following manner the designated copies of this Order with attached addendums to each party listed below:

Logis, Inc.
4117 Trade Center Blvd.
Laredo, TX 78045
ATTN: Mr. Oliver Dutoit, President

Original Order
Certified Mail – Return Receipt

Krista Edwards, Esquire
Chief Counsel
USDOT/PHMSA
400 Seventh Street, S.W.
Washington, DC 20590

One Copy
Internal E-mail

Ryan Posten
Director, Office of Hazardous Materials Enforcement
USDOT/PHMSA/OHMS
400 Seventh Street, S.W.
Washington, D.C. 20590

One Copy
Internal E-Mail

Billy Hines, Jr.
Southwestern Region Chief
USDOT/PHMSA/OHMS
Southwestern Region Office
8701 S. Gessner Rd., Ste. 1110
Houston, TX 77074

One Copy
Internal E-Mail

U.S. DOT Dockets
U.S. Department of Transportation
400 Seventh Street, S.W., RM PL-401
Washington, D.C. 20590

One Copy
Personal Delivery

Willard Walker

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CONCURRENCES		
RTG SYMBOL	PHC	
INITIALS/SIG	PHC	
DATE	6/21/06	
RTG SYMBOL	PHC 2	
INITIALS/SIG	PHC	
DATE	10/25	
RTG SYMBOL	PHC 3	
INITIALS/SIG	PHC	
DATE	11/4/06	
JAN - 3 2007		
RTG SYMBOL		
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